IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 93 OF 2005

MR. SANTANA FERNANDES ....Appellant

Versus

MR. CRISTO D'SOUZA AND 3 ORS., ...Respondents

Shri. S. S. Kantak, Advocate for the appellant.

Coram:- R. M. LODHA, J.

Date:- 26th October, 2005

P.C.

Heard Mr. S. S. Kantak, the learned Counsel for the appellant.

2. The dispute between the parties relates to a very small strip of land admeasuring about 4 X 2 metres. It is not in dispute that the appellant who is the plaintiff is not the owner of the said strip. Rather the appellant-plaintiff admitted in his evidence that the suit property belongs to the Municipality. Though the plaintiff claimed to be in settled possession of the said strip of land, I find that the plaintiff failed to establish the same. The concurrent finding of the Courts below is that the defendants have not encroached upon the suit land. The reliance placed by the learned Counsel for the appellant on the Judgment of the Supreme Court in the case of M. Kallappa Setty v. M. V. Lakshminarayana Rao, AIR 1972 SC 2299 is not apt as the said Judgment has no application to the case in hand. What is held by the Supreme Court in the case of M. Kallappa Setty is that the plaintiff, on the strength of his possession can resist interference from the defendant who has no better title than himself. In the present case, the plaintiff has miserably failed to establish his settled as well as the lawful possession. He has failed to establish any encroachment by the defendant.

The appeal does not give rise to any substantial question of law.

The second appeal is dismissed in limine.

R. M. LODHA, J.

ssm.